

## **RSC Policy Brief: Issues of Note on H.R. 1249, Patent Reform Legislation**

*June 16, 2011*

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Congress last enacted patent reform legislation nearly 60 years ago when it passed the Patent Act of 1952.<sup>1</sup> Recent legislative attempts of revising the U.S. patent system in the last four Congresses have picked up momentum this Congress with the Senate overwhelmingly passing with 95 votes its version of patent reform legislation ([S. 23](#)) that—with few exceptions—closely resembles H.R. 1249.<sup>2</sup>

H.R. 1249 makes significant substantive, procedural, and technical changes to current U.S. patent law that is designed to address challenges that American innovators face as well as to harmonize U.S. patent law with the prevailing laws of our U.S. foreign trading partners in the industrialized world. The bill has garnered vocal attention from both conservatives who support and oppose this landmark legislation because of the significance the proposed changes bring to our U.S. patent laws.

Recently, there have been multiple briefings on H.R. 1249 hosted by outside groups as well as the House Judiciary Committee to educate Members and staff on the goals and consequences of this bill should it become law. The RSC hosted a well-attended panel discussion last week where panelists from both sides of the debate on H.R. 1249 made their respective cases to staffers as to why they should encourage their bosses to support or oppose the bill. Some of the more notable provisions are highlighted and discussed below:

First Inventor to File (Section 3). This provision is one of H.R. 1249's most controversial changes to current U.S. patent law. For more than 200 years, U.S. patent law has used a "first to invent" system that addresses the circumstances where two or more persons independently develop the identical or similar invention at approximately the same time. When more than one patent application is filed at the PTO claiming the same invention, the patent is awarded to the applicant who was the first inventor in fact even if the inventor was **not** the first person to file a patent application at the PTO. H.R. 1249 will

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<sup>1</sup> P.L. 82-593 codified at Title 35 United States Code.

<sup>2</sup> Page six of the Congressional Research Service report [R41638](#) highlights the substantive differences between S. 23 and H.R. 1249 in chart format.

change this established system for determining which inventor obtains patent protection to a “first inventor to file” system—a system that every patent-issuing nation (except the United States) employs in establishing the priority rights to the invention.

Under this new first inventor to file system, whether the first applicant actually was the first individual to complete the invention is irrelevant. The following example taken from page seven of the CRS report highlighted above illustrates how the change from a “first to invent” to a “first inventor to file” works in practice.

“Suppose that Inventor A synthesizes a new chemical compound on August 1, 2010, and files a patent application on November 1, 2010, claiming that compound. Suppose further that Inventor B independently invents the same compound on September 1, 2010, and files a patent application on October 1, 2010. Inventor A would be awarded the patent under the first-to-invent rule, while Inventor B would obtain the patent under the first-inventor-to-file principle.”

Under current law, priority disputes of the identity of the true inventor are resolved through PTO “interference proceedings,” which may result in the award of priority to one of its applicants. These proceedings are not especially common<sup>3</sup>, yet reports indicate that they can take years to complete even without an appeal to the U.S. Court of Appeals for the Federal Circuit, are complex, and costly (averaging in excess of \$500,000). Interference proceedings will be replaced with a new “derivation proceeding” that would provide a forum to determine if a patent application that was first filed was misappropriated from another inventor. *Derivation proceedings are further discussed below.*

Supporters of this transition to a first inventor to file patent system argue that this change will simplify the process of acquiring patent rights while protecting innovators. They also contend that it will provide a more transparent and less costly process (compared to an “interference proceeding”), harmonize the U.S. system with the rest of the industrialized world, and help inventors market their technology with a reduced threat since the resolution to dispute between two patent filers will be the easily cognizable filing date attached to each patent application.

Supporters also explain that the Intellectual Property Clause of the Constitution grants Congress flexibility in how to implement awarding patent protection to inventors. The Constitutional authorization for Congress “to promote the Progress of Science and useful Arts” would favor a system that grants a patent to an inventor who acts first to bring the invention into public view (through filing a patent application with the PTO), rather than a system that would award a patent to an inventor who claims to have made the invention earlier, but elected to delay moving forward to initiate the patenting process.

There is wide-spread support for this transition among the nation’s leading manufactures and researchers. Additionally, former U.S. Attorney General, under President George W. Bush, Michael B. Mukasey, stated in a May 26, 2011 letter to the PTO Director, David Kappos, that he believes this transition is “constitutional” and that “Congress is free to

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<sup>3</sup> See Clifford A. Ulrich, “The Patent Systems Harmonization Act of 1992: Conformity at What Price?,” 16 *New York Law School Journal of International and Comparative Law* (1996), 405. This study concludes that less than one-quarter of one percent of patents are subject to interference proceedings.

choose to provide it [patent protection] in a way that Congress believes best accomplishes the goal of patent laws.”

Opponents of this provision argue that this transition is facially unconstitutional. They claim it is a radical departure from an evidenced-based, legal determination as to who is the true inventor, to a default rule that the first person to file a patent application is the inventor *per se*.<sup>4</sup> If the U.S. patent law needs to be “harmonized,” the rest of the industrialized world should mimic our American system, not the other way around. The intent of the Intellectual Property Clause is to protect the actual inventor so that they are incentivized to use their ingenuity to develop breakthroughs. It is not designed to make it easy on the government to resolve patent disputes.<sup>5</sup>

Awarding a patent to one who simply files before the inventor violates the intent of the Intellectual Property Clause (Article 1, Section 8, Clause 8 of the U.S. Constitution) because there can be no such thing as a “first inventor to file” since one is either the inventor or not—this transition will award an exclusive monopoly on a discovery to the second inventor to file first. Opponents also believe that this transition favors large corporations<sup>6</sup> who are better staffed and funded to file applications creating “a race to the patent office,” while forcing smaller inventors to prematurely disclose their inventions.

Fifty-one Members signed a June 10, 2011 letter addressed to the Chairman and Ranking Member of the House Rules Committee requesting that any resolution reported out of the Committee on Rules pertaining to H.R. 1249 be granted a “separate period of at least 20 minutes for debate on the constitutionality of H.R. 1249.” It is not clear at press time whether the Rules Committee will grant this request.

From a practical standpoint, noted inventors such as Steve Perlman (inventor of QuickTime, WebTV, and others) and Raymond D. Damadian, MD (inventor of the first commercial magnetic resonance body scanner, aka “MRI”) believe that their inventions could not have come into existence in a first to file country. However, noted independent inventor Louis Foreman, executive producer of the Emmy Award-winning series, “Everyday Edisons,” and publisher of Inventors Digest, supports H.R. 1249 as legislation that will strengthen the current U.S. patent system for entrepreneurs and small businesses.

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<sup>4</sup> Opponents also buttress this point by pointing to a Supreme Court decision decided last week, where the court stated that “Although much in intellectual property law has changed in the 220 years since the first Patent Act, the basic idea that inventors have the right to patent their inventions has not... Our precedents confirm the general rule that rights in an invention belong to the inventor.” *Board of Trustees of Leland Stanford Junior Univ. v. Roche Molecular Systems, Inc.* June 6, 2011, No. 09–1159, October 2010 Term.  
<sup>5</sup> <http://www.redstate.com/erick/2011/06/13/conservatives-must-oppose-patent-reform/>

<sup>6</sup> A study by former PTO Commissioner, Gerald Mossinghoff, refutes this claim and suggests that the first to invent rule neither advantaged nor disadvantaged small entities vis-à-vis larger enterprises. Gerald Mossinghoff, “*The U.S. First-To-Invent System Has Provided No Advantage to Small Entities*,” 84 Journal of the Patent and Trademark Office Society (2002), 425.

➤ **Derivation Proceedings**

- As stated above, in disputes as to ownership of the same or similar patents between two inventors, the newly created derivation proceedings will replace interference proceedings. This new system is designed to determine whether the first inventor to file a patent application “derived” (i.e., stole) the claimed invention from the subsequent inventor to file a patent application. If determined by a special board created to hear these claims (“Patent Trial and Appeal Board”) that, in fact, the first inventor to file did “derive” the subject matter of his invention from the other inventor, the patent will be cancelled. In other words, no inventor will receive the patent protection.

➤ **Grace Period**

- Current U.S. patent law provides inventors with a one-year grace period to decide whether to seek patent protection before filing for a patent application. This period is important for an inventor to be able to seek potential financial investment in their discovery and continue perfecting their idea. For example, if an entrepreneur first discloses an invention by publishing an article in a public journal, the entrepreneur understands that he or she must file a patent application within one year or else risk that the idea will not be patentable. This protection includes disclosures from third parties who are unrelated to the inventor (not the inventor’s associates) within this one year period provided that the patent applicant can prove that the invention was complete before the disclosure by the third party.
- H.R. 1249 retains this one year grace period for disclosures “made by the inventor or joint-inventor...,” but it no longer shields inventors from earlier disclosures made by third parties.<sup>7</sup>

Prior User Rights (Section 5). Under current law, an earlier user of a “method of doing or conducting business” (business method patents) that was later patented by another may claim a defense to a patent infringement charge by the patent holder. The prior user must have commercially used and reduced the infringing subject matter to practice at least one year before the effective filing date of the patent application and not derived the prior use from the patent holder.<sup>8</sup> H.R. 1249 expands this prior user defense to patent infringement to all inventions—not solely business method patents.

Proponents of this section explain that this expansion balances the interests of patent holders for exclusivity of their inventions against businesses that want to avoid infringement lawsuits regarding processes that they developed and had been commercially using prior to the patent holder obtaining the patent. Also, this right is critical in a first-to-file system because it is unworkable for many businesses to patent every process or method that is part of their commercial operations due to the complexity of the device at hand. For example, computer chips and software programs often have millions of combinations and related features.

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<sup>7</sup> Page 9 of CRS Report R41638, Patent Reform in the 112<sup>th</sup> Congress: Innovation Issues.

<sup>8</sup> 35 U.S.C. sec. 273

If all these combinations had to be specifically patented, the patent office would grind to a halt under the heavy burden. Without prior user rights, a failure to patent one of these millions of combinations would invite frivolous lawsuits where trial lawyers would wait for a product to be updated, see what features were not re-patented, file a separate "after the fact" patent on the existing product and sue on the basis of patent infringement. Under the prior user rights, businesses can assert that they already "commercialized" the patent in question. Thus, they will be able to focus on investing in new products for consumers rather than continually running to the PTO after every new update in their existing products or minor alteration production method.

Opponents of this section deride the expansion of this infringement defense currently limited only to business methods to all patents. They argue this provision would create more uncertainty for small inventors and university start-up ventures because there would be no way to know whether an invention might be subject to a manufacturer's prior user rights. Thus, private investment in early stage innovation projects would decrease, and therefore the goals of the U.S. patent system would be undermined. Additionally, opponents claim that Congress, in enacting this provision, is conferring a second patent on the same process or innovation to a second person, and therefore, running afoul of the "exclusivity" requirement of Article 1, Section 8, Clause 8 of the Constitution.

Post Grant Review (Section 6). H.R. 1249 changes the current options available for a granted patent to be reviewed by the PTO. Under the current reexamination statute, any individual (including the PTO Director) that provides the PTO a previous patent or a printed publication which raises a "substantial new question of patentability" will reopen review of the patent. The review is either *ex parte* (a dialogue solely between the PTO examiner and patent applicant once a 3<sup>rd</sup> party petitions for the review) or *inter partes* (the requester participates more in the proceedings by responding to arguments, etc.). These review proceedings are intended as an inexpensive alternative to litigation.

H.R. 1249 creates a new "post-grant review" proceeding that allows a petitioner to challenge the validity of a patent within 12 months of grant of the patent based upon any grounds—not just a previous patent or publication relating to the patent's novelty or nonobviousness. The challenge against the patent's validity must meet a standard that it is "more likely than not that at least one of the claims is unpatentable." The review must be completed by the PTO in one year, and the individual who commenced the proceeding is barred in any future proceedings from raising issues that were "raised or reasonably could have been raised" during the post-grant review.

*Inter partes* reexamination is replaced by a new *inter partes* review proceeding that is only available after a post-grant review proceeding or 12 months after grant of a patent (whichever is later). *Inter partes* review challenges are limited to patents or printed publications.

Proponents of this provision argue that this will improve patent validity and decrease patent litigation, as well as harmonize U.S. law with that of other industrialized countries. While current U.S. law does provide for reexamination proceedings, this is viewed by some as too narrow and limited in scope and application. Some critics charge that the lack of post-

grant review procedures has resulted in poorly defined patents and increased litigation after patent issuance.

Opponents argue that this new vehicle afforded to patent infringers would increase litigation by making challenges easier, increase uncertainty in patent validity (via the expanded reexamination provisions), and would disproportionately affect small companies and non-profit research groups that do not have the means and the time to endure such proceedings and the associated bureaucracy. Opponents also argue that the resulting uncertainty regarding issued patents may make it very difficult to attract venture capital necessary for research and development on new innovations.

Fee Setting Authority (Section 10). Most fees charged to users and applicants of patent services by the PTO are determined by Congress. This section grants the PTO the authority “to set or adjust by rule any fee established or charged by the Office...[that] in the aggregate [are] set to recover the estimated cost to the Office for processing, activities, services and materials relating to patents and trademarks...” Prior to setting such fees (either increasing or decreasing fees), the PTO Director must give notice to the Patent and Trademark Public Committee and publish the specific rationale and purpose of the proposed change in the *Federal Register*. Additionally, the PTO Director must seek public comments for no less than 45 days and must notify Congress of any final decision.

Proponents of this new PTO authority explain that history has shown that this new authority would allow the PTO to respond promptly to the changing economic climate and properly administer the agency’s growing workload. Opponents claim that there is no need to cede Congress’ power to determine PTO fees to an Executive agency.

Funding Agreement (Section 13). This section reduces the amount that a small number of universities, other non-profit organizations, and small businesses must reimburse the federal government on royalties (or income earned) they receive from licensing inventions developed with the assistance of federal taxpayer support (Government Owned, Contractor Operated, aka “GOCOs”). Under current law, these entities are permitted to retain the balance of any royalties/income for up to five percent of the annual budget of their facilities. If the balance exceeds five percent, the entities must refund 75 percent of that excess to the federal government. This section allows the entities to instead only reimburse the federal government 15 percent of the excess. Some conservatives view this as subsidizing innovation.

In general, almost all university-owned research labs that receive federal grants keep all of their income on royalty fees. In the 30 years since this has been in law, only one of the few remaining GOCOS (Ames Laboratory at Iowa State University) has ever hit the five percent threshold. According to the bill’s [CBO Report](#), Iowa State has returned approximately \$1 million to the Treasury in the last several years. This provision seeks to ensure equity and not require Iowa State to repay the federal government a larger portion of its income.

Transitional Program for Covered Business Method Patents (Section 18). This section permits parties who have been sued (or accused) for patent infringement on

certain business method patents<sup>9</sup> to seek the invalidation of those patents by the PTO in a special reexamination proceeding. This transitional program will sunset after 10 years after enactment. Only individuals who have been either sued for infringement (or charged with infringement) of a business method patent may petition the PTO to commence such a proceeding.

Business methods were not patentable until a 1998 Federal Circuit court decision held that they were.<sup>10</sup> This decision resulted in numerous business method applications to the PTO, which had neither expertise, nor the library of invalidating prior art, to properly review these patents. These types of patents are admitted for review by the PTO only if the petitioner satisfies that “it is more likely than not” the patent should be invalidated. Review of the patent must be completed within 12 months.

Supporters<sup>11</sup> of Section 18 argue that this section will help to weed out a number of defective patents issued by the PTO in the last 10 or so years that should have never been granted. It is well-settled law that post-grant review of patent validity by the PTO is constitutional due to a landmark patent law case<sup>12</sup> that determined that post grant review does not violate the due process Fifth Amendment takings clause (requiring the government to compensate for taking private property for a public use), the Seventh Amendment right to a trial by jury or Article III’s power of court to provide final decisions. The court reasoned that a “defectively examined and therefore erroneously granted patent must yield to the reasonable congressional purpose of facilitating correction of governmental mistake.” Section 18 is entirely consistent with the reexamination procedures upheld by the Court over 25 years ago and is specifically designed to correct governmental mistakes in wrongfully issuing a business method patent.

Opponents<sup>13</sup> of this section argue that Section 18 is a special interest banking bailout. They argue that subjecting an existing patent holder to a retroactive review from financial institutions who desire to use the patented business method without paying for it constitutes a “taking” of the patent holder’s property without just compensation from the federal government. Additionally, they counter that allowing an accused infringer who

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<sup>9</sup>These business methods include “a method or corresponding apparatus for performing data processing operations utilized in the practice, administration, or management of a **financial product or service**, except that the term shall not include patents for technological inventions.” Some examples may include apparatuses for conducting automatic financial transactions, inventory management systems to manage financial transaction instruments, methods for automatically transferring funds from a bank account to a credit account, a computer-implemented method for summarizing receipts and grouping the receipts into one or more invoices, and many other variations. According to the PTO, since 1997, there have been 16,029 Business Methods Patents approved.

<sup>10</sup> *State Street Bank and Trust Co. v. Signature Financial Group*, 149 F. 3d 1368 (Fed.Cir. 1998).

<sup>11</sup> American Bankers Association, American Council of Life Insurers, American Financial Services Association, American Insurance Association, The Clearing House Association, Consumer Bankers Association, Credit Union National Association, The Financial Services Roundtable, the Independent Community Bankers of America, National Association of Mutual Insurance Companies, Property Casualty Insurers Association of America, and Securities Industry and Financial Markets Association.

<sup>12</sup> *Patlex Corporation v. Gerald J. Mossinghoff*, 758F.2d 594 (Fed. Cir. 1985).

<sup>13</sup> Intellectual Ventures, Trading Technologies, Data Treasury, Walker Digital, U.S. Business Industry Council, and Eagle Forum.

unsuccessfully challenged the validity of a patent in federal court to seek reexamination of that same patent creates an unfair 2<sup>nd</sup> and 3<sup>rd</sup> “bite at the apple.” Additionally, it contravenes fundamental principles of separation of powers in two respects.<sup>14</sup> First, allowing an accused infringer who has lost a challenge to initiate reexamination proceedings before the PTO effectively seeks the retroactive reopening of final federal court judgments. This violates the fundamental principle that federal courts have the power not just to rule on cases but to *conclusively* resolve them. Secondly, Section 18 subjects a final court judgment regarding the validity of covered business method patents to review by an executive agency—the PTO, not another co-equal or higher federal court. In this regard, Section 18 violates the constitutional “principle that Congress cannot vest review of the decisions of Article III courts in officials of the Executive Branch.”<sup>15</sup>

Patent and Trademark Office Funding (Section 22). This section removes the PTO from the normal appropriations process to receive federal funds to run the agency by allowing it to retain all of the fees it collects from inventor and trademark filers. Under current law, the fee revenue it collects is deposited into a special PTO appropriations account in the U.S. Treasury. Appropriators then decide at what level to fund the agency each fiscal year. According to the PTO, since 1990 the PTO has been appropriated \$1 billion less than the total amount of fees it has self-generated.

Proponents of this section believe the PTO could operate more efficiently if it had full access to all of its fee-generated revenue. The agency has a backlog of 1.2 million patent applications to review, which contributes to an average review time of approximately three years and issuance of potentially weak patents.

An amendment offered by Senator Tom Coburn (R-OK) added this section to the Senate-passed patent reform legislation (S.23)—and has offered similar amendments since the 109<sup>th</sup> Congress—and argued in a June 9, 2011 letter to Appropriations Chairman Hal Rogers (R-AL) and Budget Committee Chairman Paul Ryan (R-WI) that Section 22 of H.R. 1249 would “provide a solution to this [financial] crisis,” while prohibiting the “PTO to escape Congressional oversight and accountability.” According to Sen. Coburn, Section 22 “requires extensive transparency and accountability from the PTO due to the four reporting requirements, which give Congress numerous opportunities to conduct vigorous oversight.”<sup>16</sup> There is wide [industry](#), university, union, association, venture capital, and start-up [innovation](#) business support for this provision.

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<sup>14</sup> The Supreme Court in a 1995 decision made clear that the Constitution “gives the Federal Judiciary the power not merely to rule on cases, but to *decide* them, subject to review only by superior courts in the Article III hierarchy, *Plaut v. Spendthrift Farm*, 514 U.S. 211 (1995)

<sup>15</sup> *Id.* at 218 (citing *Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103 (1948)).

<sup>16</sup> The four reporting requirements referenced include: 1) within 60 days of the end of each fiscal year, the PTO Director shall submit a report to Congress summarizing the PTO’s operations for the preceding fiscal year, the agency’s operating plan, its long-term modernization plans and progress on implementing this modernization plan; 2) within 30 days after the beginning of each fiscal year, the PTO Director must notify the Committees on Appropriations of both houses of Congress of the plan for the obligation and expenditures of the total amount of the funds for that fiscal year under P.L. 109-108 (H.R. 2862:Science,



On the other hand, Chairman Rogers, Chairman Ryan and other [opponents](#) of this section argue that the PTO should not be spared from requesting revenue back from appropriators. In upholding proper checks and balances in our constitutional system against governmental abuse of power, the best check that Congress possesses is the power of the purse and the constitutional mandate that “No money shall be drawn from the Treasury, but in consequence of appropriations made by law.”<sup>17</sup>

Even if one believes that the PTO deserves more federal funding to address its backlog of patent applications, this issue can be solved through the normal appropriations process. Carving out the PTO from this process risks giving an executive branch agency complete autonomy in how they run the agency away from congressional oversight.

- **Potential Pro-Life Concern with Section 22:** Since this section removes the PTO funding out of the annual appropriations process, an important pro-life rider, (referred to as the “Weldon Amendment”) traditionally attached to the annual Commerce, Justice, State (CJS) Appropriations, bill would be removed.
  - Since 1987, the PTO employed an internal policy that human beings at any stage of development are not patentable subject matter under U.S. patent law.
  - To bolster this internal PTO policy, Congress has included the Weldon Amendment in the CJS appropriations bill since 2004.
  - **Note:** Upon successful passage of the Manager’s Amendment submitted to the Rules committee, the Weldon amendment will be codified to simply carry forward existing law.

Priority Examination for Technologies Important to American Competitiveness (Section 26). This section permits the PTO to choose which patent applications they believe are important to U.S. competitiveness in prioritizing their review processes of patent applications. It is not clear how the PTO will define which products, processes, or technologies will receive this special priority consideration. According to the PTO, the PTO Director already possesses the power to “make special” any application for the public good if the PTO Director determines an application has a compelling national interest, i.e., cure for cancer, nuclear fusion, etc. Some conservatives might be concerned this provision allows the PTO to pick winners and losers among the hundreds of thousands of patent applications it receives each year. In calendar year 2010, the PTO received over half a million patent applications.<sup>18</sup>

Calculation of 60-day Period for Application of Patent Term Extension (Section 27). This section clarifies PTO “counting” rules that are used to determine whether an applicant has submitted an application in a timely manner. This procedural section

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State, Justice, Commerce, and Related Agencies Appropriations Act, 2006); 3) the PTO Director must annually provide for an independent audit of the financial statement of the PTO; and 4) the PTO Director must prepare and submit to the President an annual “business type” budget for the United States Patent and Trademark Office Public Enterprise Fund as the President prescribes by regulation for the Federal Budget.

<sup>17</sup> Article I, Section 9 of the U.S. Constitution.

<sup>18</sup> [http://www.uspto.gov/web/offices/ac/ido/oeip/taf/us\\_stat.htm](http://www.uspto.gov/web/offices/ac/ido/oeip/taf/us_stat.htm)

applies to any application for an extension of a patent term that is pending, filed after, or as to which a decision regarding the application is subject to judicial review.

This provision passed as an amendment in the Committee markup by Ranking Member John Conyers by voice. Some speculate that it is a special interest provision aimed at bailing out a pharmaceutical manufacturer (Medicines Company) whose attorneys failed to file an extension application for the drug Angiomax with the PTO by one day.<sup>19</sup>

- **Note: Upon successful passage of the Manager's Amendment** submitted to the Rules committee, this section will be stripped from the bill.

#### **Outside Organizations Supporting:**

3M; Abbott; Adobe Systems Incorporated; Allianz Life Insurance Company of North America; The Allstate Corporation; American Bankers Association American Council on Education (1600 plus institutions and associates); American Institute of Certified Public Accountants; American Intellectual Property Law Association; Ameriprise Financial, Inc.; Apple, Inc.; Association of American Medical Colleges; Association of American Universities; Association of Public and Land-grant Universities; Bank of America; Biotechnology Industry Organization; Boston Scientific; Bristol-Myers Squibb; Caterpillar; The Charles Schwab Corporation; Dell; Dupont; eBay, Inc.; Eastman Chemical Company; Eli Lilly and Company; E\*Trade Financial Corporation; Exxon Mobil Corp.; Facebook; Ford Motor Co.; Google; GlaxoSmithKline; Independent Community Bankers of America; Intuit, Inc.; Johnson & Johnson; JPMorgan Chase; Liberty Mutual Holding Company, Inc.; Mastercard Worldwide; Medtronic; Microsoft; Monster.com; Motorola; The NASDAQ OMX Group, Inc.; Netflix, Inc.; News Corporation; New York Life Insurance; Northrop Grumman Corporation; Novartis; Oracle; Patent Café'.com; Pfizer; Pharmaceutical Research & Manufacturers of America (PhRMA); Proctor & Gamble Company; RBC Bank, USA; Sallie Mae, Inc.; Securities Industry and Financial Markets Association; Small Business & Entrepreneurship Council; State Farm Insurance Companies; Sun Microsystems, Inc.; SunTrust Banks, Inc.; Symantec Corporation; TD Bank; Texas Instruments; Toyota Motor Credit Corporation; UBS; the United Inventors Association of America; United Technologies; U.S. Bancorp; U.S. Chamber of Commerce, Verizon; Visa, Inc.; Wells Fargo & Company; Western Digital Technologies, Inc.; Yahoo!; Zions Bancorporation.

For the complete list of supporters, click [here](#).

#### **Outside Organizations Opposing:**

Heritage Action for America (key score); Eagle Forum (double key score); U.S. Business and Industry Council; National Consumers League; Trading Technologies; Institute of Electrical and Electronic Engineers (IEEE-USA); Wisconsin Alumni Research Foundation; American Innovators for Patent Reform; Angel Venture Forum; National Association of Patent Practitioners (NAPP); National Small Business Association; IP Advocate; National Association of Seed & Venture Funds; National Congress of Inventor Organizations; Inventors Network of the Capital Area; Professional Inventors

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<sup>19</sup> Medicines Company v. Kappos, et al., 731 F. Supp. 2d 470 (E.D. Va. 2010).

Alliance USA; Public Patent Foundation; Let Freedom Ring, Southern Baptist Ethics and Religious Liberty Convention; 60 Plus, Gun Owners of America; Council for America; American Civil Rights Union; Christian Coalition; Patriotic Veterans, Inc.; Center for Security Policy; Family PAC Federal; Liberty Central; Americans for Sovereignty; Association of Christian Schools International; Conservative Inclusion Coalition; Tradition, Family, Property; WeReadTheConstitution.com; and Conservative commentators/radio hosts Glenn Beck, Frank Gaffney with townhall.com, and Erick Erickson with redstate.com.

**Outside Groups that Oppose Specific Sections of the Bill:** US-Israel Science & Technology Foundation (Sections 3 and 5); Public Citizen (Section 16); American Association for Justice (Section 16); Generic Pharmaceutical Association (Section 12); Biotechnology Industry Organization (Section 12); Intellectual Ventures (Section 18); Data Treasury (Section 18); Walker Digital (Section 18); and Trading Technologies International (Section 18).

Additionally, a number of universities have expressed concerns with the bill including Brigham Young University, University of Kentucky, Oregon Health & Science University, North Dakota State University, South Dakota State University, University of Akron Research Foundation, University of New Hampshire, University of New Mexico, University of Utah, University of Wisconsin, University of Wyoming, Utah Valley University, Weber State University.

***RSC Staff Contact:*** Joe Murray, [joe.murray@mail.house.gov](mailto:joe.murray@mail.house.gov) (202)-226-0678